IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 573 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RATILAL GOVINDJI NAYAK

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 573 of 1987

MR AD SHAH for Petitioner No. 1

Mr S J Dave, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/03/2003

ORAL JUDGEMENT

This is an appeal under section 374 of the Code of Criminal Procedure, 1973 (for short, 'Code') in order

to challenge the judgment and conviction order dated 20.7.1987 in Special Case No.2 of 1983 under which the learned Special Judge, Surat convicted the present appellant for offence punishable under section 5(2) of the Prevention of Corruption Act, 1947 and sentenced him to suffer R.I. for three months. The trial court also directed the appellant to pay fine of Rupees two hundred. In default of payment of fine, the appellant was directed to undergo further R.I. for 15 days. The appellant was also convicted for an offence punishable under section 161 of Indian Penal Code. However, no separate sentence was imposed on him for that offence.

2. The facts of the case of the prosecution before the trial court may be briefly stated as follows:

In September, 1981, the present appellant was functioning as Talati-cum-Mantri, Group Gram Panchayat in Palsana Taluka of Surat District and as such he was a public servant. The informant had filed a FIR before the concerned police station on 22.9.1981. It seems that about 3-4 months prior to the date of filing of FIR, the informant Dayaram Zaverbhai Mistry was required to have mutation of entries of agricultural land in his name on the basis of a will executed by his father. It seems that the said informant approached the appellant for the said purpose and, therefore, the appellant prepared certain notices and other documents and handed over the same to the said informant. Thereafter, the petitioner also required certified copies of the mutation entries made in his name. The informant approached the appellant and at that time, the appellant told him that the will did not contain the signature of the father of the informant and the informant was, therefore, required to spend some amount for the said mutation purpose. On enquiry, the appellant made it clear that the informant would be required to pay a sum of Rs. 400/- for making entry and Rs.100/- for supplying copies of Village form VII - VII A, XII etc. Therefore, the appellant in all demanded Rs.500/from the informant. At that stage, the informant told him that he did not have money with him and, therefore, he would pay the same afterwards. This episode took place, according to the case of the prosecution, on 22.9.1981. Thereafter the informant, according to the case of the prosecution, consulted his friends and he was given to understand that if money was not paid, the work would not be done and since the informant was a resident of U.K., it would not be possible for the informant to again come to India for the said purpose. Ultimately, the informant approached the Police Inspector of Anti Corruption Bureau and filed his

FIR which was reduced into writing and the informant was told to come to the ACB office on the next morning. Accordingly the informant went to the said office on 23.9.1981. The ACB Police Officer had already invited two persons as panchas from the office of the Sales Tax Commissioner. They were introduced to the informant and the informant was introduced to the panchas.

3. At the instance of the police officer, the informant had given details of his grievance to the panchas in a brief manner and then the FIR filed by the informant was also read over to the panchas and their signatures were obtained thereon. Thereafter, Police Sub-Inspector Puwar brought anthracene powder and explained ultra violet lamp and showed experiment with respect to the use of ultra violet lamp and anthracene powder and the characteristics thereof. Thereafter, the informant supplied currency notes of Rs.500/- (Five notes of Rs.100/- each). Anthracene powder was applied on those currency notes and when they were seen under the ultraviolet lamp, it was noticed that light blue fluorescence was visible on those notes. Thereafter, the said currency notes were placed in the upper pocket of the T-shirt of the informant and he was told not to touch them till the demand was made by the appellant. The first panch was told to accompany the informant and witness what may happen in his presence. Preliminary panchnama was drawn and thereafter two panchas, informant and the police officers and other police personnel started to go to the office of the appellant. They reached the said office and the informant and panch no.1 were required to enter the office of the appellant whereas panch no.2 and the Police Inspector and other police personnel occupied their position outside the office.

4. Prosecution has further alleged that when the informant and the panch entered the office of the appellant, the appellant inquired from the informant about the aforesaid transaction. The informant took out the currency notes from the upper pocket of the T-shirt and handed over the same to the appellant. The appellant accepted the said amount and placed it under the papers on his table. Those papers were again placed on the currency notes and paper weight was also placed thereon. AT that time, signal was given to the raiding party and, therefore, the Police Inspector and the raiding party entered the said office of the appellant.

5. There also further process was undertaken. Ultraviolet lamp experiment was demonstrated, the three

fingers and thumb of right hand of the appellant were found showing the presence of anthracene power. Similarly presence of anthracene power was visible on the right hand of the informant and on his pocket. Search was carried out and the aforesaid currency notes were seized. The presence of anthracene was noticed thereon also. Other relevant documents were also seized and at the end of the said process, the Investigating Police Officer concluded the panchnama. Thereafter statements of witnesses were recorded and at the end of the investigation, charge sheet was filed against the present appellant for the aforesaid offence. The appellant was enlarged on bail. He was supplied with copies of police investigation papers. Charge was framed, it was read over and explained to the appellant. The appellant pleaded not guilty to the said charge. Therefore, evidence was recorded. At the end of the trial, the trial court recorded further statement of the appellant under section 313 of the Code and after hearing the arguments, the trial court found the appellant guilty for the aforesaid offence. After hearing the appellant and his advocate on the point of quantum of punishment, the learned trial Judge imposed the punishment on the appellant as aforesaid.

6. Feeling aggrieved by the said judgment and conviction order of the trial court, the appellant has preferred this appeal before this court. It has been mainly contended before this court that the Police Sub-Inspector Puwar was not examined as a witness before the trial court though he was mainly responsible for demonstrating the effect of anthracene powder and ultra violet lamp at the office of the ACB. That though the Supreme Court has laid down since long that in such traps the ACB should use phenolphthalein powder and sodium carbonate solution, the I.O. in the present case has used anthracene powder and ultra violet lamp. That the entries were already made and the copies were ready before the incident in question and, therefore, it is not probable that the appellant would demand money and the informant would part with the said money in favour of the appellant. That the Investigating Officer was also a member of the raiding party and, therefore, he could not have undertaken the investigation and he ought to have entrusted the same to another officer. That the trial court has not properly appreciated the evidence on record and, therefore, there is serious error on the part of the trial court in convicting the appellant. That on the whole, the judgment and conviction order of the trial court are erroneous and illegal and deserve to be set aside. It is, therefore, prayed that the present appeal

be allowed, the judgment and conviction order of the trial court be set aside and the appellant be acquitted of the offence in question.

7. On receiving the appeal, it was admitted and the appellant was enlarged on bail. Thereafter the matter came up for final hearing. On behalf of the appellant, Mr A D Shah, learned Advocate has advanced his arguments. On the other hand, Mr S J Dave, learned APP has advanced arguments on behalf of the respondent State. Both of them have taken me through the entire evidence and the relevant portions of the judgment of the trial court. In fact, learned advocate for the appellant has read the entire evidence of all the witnesses on record in order to substantiate his argument on the aforesaid counts.

8. Now if we look to the evidence on record, it is very clear that the trial court had examined certain witnesses. PW 1 Dayaram Zaverbhai Mistry, Exh.12 is the first witness who is also the informant. He has deposed that by the end of 1980, he had come from U.K. to India. That he was staying at village Kadodara at a distance of 1 k.m. from village Chalthan, which is adjacent to the land which stood in the name of his father. His father had executed a Will in his favour and, therefore, he wanted to get the said land mutated in his name and, therefore, he had approached the appellant, herein, i.e. the Talati-cum-Mantri at the relevant point of time. That he had also handed over the Will of his father to the appellant in order to show that he was the owner of the land in question. It is also deposed by him that the appellant demanded a sum of Rs.400/- and Rs.100/- for carrying out the process and for supplying copies to the informant. That he said that he did not have money with him and, therefore, he had agreed to come again on the next day. He has further deposed that he, thereafter, consulted certain people in the village and thereafter approached the ACB office and contacted the P.I. Mr Bunneth. That he had given details of the aforesaid episode and on hearing him, the P.I. enquired as to whether he wanted to file FIR and when he said yes, the P.I. recorded FIR as per his instructions. That thereafter he signed it and the P.I. had told him to come on the next morning with an amount of Rs.500/-. That accordingly, he again approached the said office in the morning hours on 23.9.1981 i.e. on the next day of recording of FIR and that he had gone there with currency notes of Rupees five hundred. That two panchas were brought to the office and he was introduced to the panchas. That thereafter P.S.I. Puwar was also invited there and he (the witness) produced the aforesaid

currency notes of five hundred in presence of P.I., Mr Puwar and panchas. That PSI Mr Puwar informed them about the characteristics of anthracene powder and ultraviolet lamp and then experiment was demonstrated to them. That thereafter anthracene powder was applied to the said currency notes and on seeing those currency notes under the ultra violet lamp, light blue fluorescent colour was visible on these notes. That thereafter the said currency notes were placed in the upper pocket of his T-shirt and the extra powder, the paper, cotton etc. used for this purpose were destroyed. It is also deposed by him that he was told not to touch the said currency notes till demanded by the appellant. That panchnama was prepared and signatures were obtained. That even in the panchnama, numbers of the currency notes were recorded.

9. He has also deposed that thereafter, the raiding party proceeded towards the office of the appellant. That the first panch accompanied him and panch no.2 stayed with the raiding party outside the office but around it. Thereafter the informant and the first panch entered the office of the appellant. The appellant asked them to sit and as soon as they occupied their position, the appellant enquired about the demand. Therefore, he took out the said currency notes and handed them over to the appellant. The appellant accepted the same and placed it under the papers lying on his table and then again placed those papers on those currency notes and also placed paper weight thereon. Thereafter, signal was shown and the raiding party entered the said office of the appellant, the currency notes were seized from the said place and thereafter, panchnama was prepared and signatures of panchas were obtained. This is the evidence of those witness.

10. The witness has been cross examined at length. An attempt was made, during the cross-examination to show that before 23.9.1981, entries were posted and they were ready for being supplied to the informant. The witness has not accepted the said suggestion.

11. Then, the said evidence got support from the evidence of his own FIR which has been produced by him at Exh.16. In support of the said evidence, the prosecution also examined PW 2 Dalpatbhai Chauhan, Exh.21. This witness was serving as Sales Tax Inspector. He was invited as panch and according to him, he had gone to the office of the ACB on 23.9.1981. That the panchas and the informant were introduced to one another and FIR was read over to them and their signatures were obtained. That, the experiment of anthracene powder and ultraviolet lamp was demonstrated. He has also deposed that the informant

produced currency notes of five hundred, anthracene powder was applied to these currency notes and thereafter they were placed in the upper pocket of the T-shirt of the informant. Preliminary panchnama was drawn and then the raiding party proceeded to the office of the appellant. He has, further, deposed that he and the informant both had entered the office of the appellant. That the appellant supplied copies of the village Form Nos. VII-VII-A-XII to the informant and that the appellant enquired from the informant as to whether he had brought the money as per the discussion taken place earlier, at which the informant had agreed that he had brought it. That thereafter, the informant took out the said currency notes from his pocket and handed them over to the appellant, which were accepted by the appellant and he placed the same on the table under the papers. He also deposed that thereafter signal was given and the raiding party entered the said office and currency notes were seized from the said place. He has also deposed as to how further procedure with anthracene powder and ultraviolet lamp was carried out on the currency notes, on the hands of the informant and the appellant etc. Therefore, according to the case of the prosecution, this panch witness has fully supported the case of the informant. Then there is the evidence of Panchnama at Exh.22 which also supports the case of the prosecution and the evidence of the informant and the panch witness. The said evidence is further supported by the evidence of PW 3, Padamsingh at Exh.23. His evidence also supports the evidence of the informant and the panch witness and it is further supported the panchnama also. This is the state of affairs so far as the oral evidence is concerned.

11. Even if we agree that demand, acceptance and recovery of bribe amount are the three important ingredients in trap cases, then we find in the case on hands as follows:

(i) The fact of initial demand has been proved through the evidence of the informant-PW.1, Exh.12.

(ii) It is supported by his FIR Exh.12

(iii) It is further supported by the conduct of the informant inasmuch as he informed the police and filed his FIR. Then he again went there with bribe money. Then he approached the appellant on the trap day.

(iv) This fact of initial demand gets further support from the evidence of the informant that on the trap day, when he, in the company of the first panch met the appellant the appellant inquired from him if he had brought bribe money. On this point, even the first panch has supported the evidence of the informant.

(v) As regards the demand of bribe money on the date of the trap, there is evidence of the informant, the first panch, the FIR and panchnama.

(vi) The evidence of consequent recovery of bribe money further supports the case and evidence of pre-trap demand and trap day demand.

(vii) The evidence of acceptance can be gathered from the evidence of informant, first hand, FIR and panchnama.

(viii) The evidence of recovery of bribe money further supports the case and evidence of demand and acceptance.

(ix) The fact of recovery of bribe money is proved on records through the evidence of the informant, first panchas, I.O., FIR, panchnama, presence of anthracene powder on the marked currency notes on the person of the informant, on the person of the appellant, on the paper under which the powder marked notes were placed and on the table cloth on which they were kept.

(x) The evidence that the required and relevant copies of revenue records were kept ready for delivery on the trap day and the evidence that they contained the date of trap day lends additional support to the case and evidence of demand, acceptance and recovery of bribe money.

12. An attempt was made to show that the first panch was known to the informant and they were found moving together. This attempt and effort has met with a failure as there is absolutely no material on records to show or to suggest or to prove the said defence. The I.O. had simply addressed a letter to the officer of the first panch and the said officer told this first panch to go to the office of the ACB. There is no material to show that the panchas were known to the I.O. or to the informant or that the I.O. had selected them as panch.

13. It has also been argued that the informant was required to pay taxes to the panchayat. That the appellant had prepared receipt but the informant did not have Indian currency and therefore, there was some oral exchange of words between the informant and the appellant and, therefore, the informant had arranged for the trap. Even the Sarpanch has deposed, as defence, witness that he had intervened and hence the matter was settled between the two. The informant had no reason then to file a false FIR.

14. The appellant has nowhere explained the presence of anthracene powder on the tips of his fingers and thumb as well as on the paper and table cloth lying on his table. He has also not explained the presence of currency notes of Rs.500/- on his table. He has not explained the presence of powder on those currency notes. Had it been the case of planting of the currency notes, then the presence of powder on his fingers and thumb could not be there.

15. Again, he has rendered no explanation as to why he had kept certified copies ready on the trap day and as to why they contained that date and as to why he neither kept them ready nor did he hand them over to the informant before the date of trap. He has also not explained as to why he did not inform the informant before the trap day, that the relevant entries were made and certified and the informant could get those copies at any point of time.

16. Now, learned Advocate for the appellant has argued at length before this court that the evidence of the witnesses is highly improbable and not acceptable. Learned advocate for the appellant has also argued that if the currency notes were lying on the table within the knowledge of the informant and the first panch, then there was no necessity for the Investigating Police Officer to carry out personal search of the appellant. That the very fact that the personal search of the appellant was first carried out by the Investigating Officer clearly suggests that none was aware as to whether the said currency notes were lying on the table. It is also his argument that the personal search of the appellant was carried out under the pretext that the appellant was possessing the currency notes on his person.

17. Now the evidence on record discloses that the P.I. did not enquire at the first instance, as to where the currency notes were. It is also not on record that

the first panch and the informant had conveyed it to the Investigating Officer that the currency notes were lying on the table under certain papers. It, therefore, appears that the I.O. was not aware at that time that the currency notes were lying on the table. It may be for this reason that the I.O. conducted personal search of the appellant at the first instance. Simply because the personal search of the appellant was undertaken at the first instance, it does not go to show or suggest that even the informant and the first panch were not aware as to whether the currency notes were lying.

18. It is then contended that though the paper weight was lifted by the appellant, according to the case of prosecution, the said paper weight was not examined under ultra violet lamp in order to find out the presence or otherwise of anthracene powder thereon. It seems that it is nobody's case that the appellant had lifted the said paper weight by using his right hand. It is also nobody's case that the appellant had used his right hand for again placing the said paper weight on those papers. Therefore, when the witnesses have not deposed and when it is not recorded in panchnama that the appellant had used his right hand for touching the paper weight, then there was no reason for the I.O. to examine the paper weight under the ultra violet lamp. It is moreso, when there is no evidence on records to show that the left hand of the appellant had come in contact of the powdered currency notes.

19. It is because of the aforesaid witness supported by the informant that the right hand of the appellant was examined under the ultra violet lamp and the anthracene powder presence was noticed on three fingers and thumb of his right hand.

20. On this aspect of the case, it has been argued that when a particular person receives a particular amount, normally he would count the same and once the notes are counted, the anthracene powder would not appear only on the fingers of one hand but presence would be noticed elsewhere and on another hand also. This argument is not acceptable on the ground that this was not a recovery of Rs. 500/- on the basis of any legal dues of the appellant. This was an amount of bribery. Moreover, when the currency notes of Rs.100 have been tendered, then the appellant would have taken it for granted that they were currency notes of Rs.500/-. This may be a matter of trust and faith. Therefore, simply because the appellant did not count the said currency notes it cannot be said that the evidence is not genuine.

It is nobody's case that the appellant had counted the said currency notes. Therefore, the remaining part of the hand of the appellant could not show presence of anthracene powder thereon. Therefore, this argument cannot and does not hold any ground.

21. It has then been argued that sine long it has been observed by Courts that ACB should not use anthracene powder and ultra violet lamp. There is no dispute about the said argument also. Long back in 1976, Hon'ble the Supreme Court had an occasion to deal with such an issue in the case of Raghbir Singh v. State of Punjab, reported in AIR 1976 SC 91. In para 11 of the said judgment, the Supreme Court has observed that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. There is no dispute about the said desire expressed by the Supreme Court with respect to the use of a particular chemical for the purpose of trap. It is required to be considered that in para 8 of the said judgment, the Supreme Court has observed that the prosecution case also suffers from another serious infirmity and it is that it rests entirely on the evidence of witnesses who are either interested witnesses or police witnesses.

22. In the present case we find that the present informant cannot be treated to be an interested witness who was willing to part with money. On compulsion, he was required to give bribe to the appellant. Therefore, he could not be treated to be a willing bribe giver. It is moreso, when his evidence has been supported by independent panch witness. An attempt has also been made to show that a public servant coming to a court as a panch witness is normally required to support the prosecution case, otherwise he may be dealt with departmentally. There is nothing on record to show that the panch witness was directed to give evidence in a particular fashion and that on his failure to do so, he would be departmentally dealt with. The witnesses are after all witnesses coming to the court who are expected to tell the truth to the court. With a view to judge the veracity and reliability of a witness, cross-examination of a witness is a very strong weapon in the armory of the defence which may be effectively used by the defence at

an appropriate stage. In the present case, the panch witness has been cross examined but by and large his evidence is not found to be contradictory to the evidence of the informant and the evidence in the form of panchnama. He is not shown to be a witness interested in the present case. Therefore, when the evidence of the informant has been amply corroborated by the evidence of panch witness, FIR and panchnama, then, simply because the prosecution has used anthracene powder and ultra violet lamp and not phenolphthalein powder and sodium carbonate solution, it would not be proper to extend benefit of reasonable doubt to the appellant.

23. It is also required to be seen that in the case of Ramsing Bhadrasing v. State, reported in 1960 GLR 138, this court had observed that in cases of offence under the Prevention of Corruption Act, the prosecution must lead positive evidence by way of expert evidence or books of science to prove the method of detection of anthracene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthracene powder when such test is applied.

24. In the present case we find that the informant as well as the panch witness both have said that they were explained about the characteristics of anthracene powder and ultra violet lamp by the PSI at the time when the first part of the panchnama was drawn. These characteristics have, by now, become very much known through several reported cases.

25. It is required to be considered here that it is true that the said PSI has not been examined. However, the witnesses have said positively that the aforesaid effect was explained to them in details. On that aspect, no serious cross-examination appears to be on record with respect to these two witnesses. Therefore, the evidence of these two witnesses supported by the evidence, panchnama and oral evidence of the P.I. is required to be considered from that angle also. In other words, simply because the prosecution has not examined PSI Puwar, it cannot be said that the effect of anthracene powder and ultra violet lamp was not made known to the prosecution witnesses.

26. In the case of Ambalal Motibhai Patel v. State, reported in 1960 GLR 113 also this court was required to deal with an appeal by the accused persons convicted for an offence punishable under section 5(2) of the

Prevention of Corruption Act. There the Court has observed that "as observed by Their Lordships of the Supreme Court such a person cannot be treated as an accomplice. As observed by Their Lordships of the Supreme Court, a person who is not a willing party to giving of bribe and who is only actuated by the motive of traping another, cannot be regarded as an accomplice, but the evidence of such a witness is that of a partisan witness who was out to entrap another". However, in the present case, we find that the evidence of the informant has been fully and amply supported by the evidence of panch witness, panchnama, FIR and the evidence of P.I. Bunneth. Therefore, when this witness has been supported by other independent evidence, on material particulars, evidence of the informant cannot be thrown away simply because he is an informant.

27. Learned Advocate for the appellant has relied upon a decision in the case of Kanubhai Kantibhai Patel v. State of Gujarat, reported in 1998 (1)GLH 924. There the evidence was to the effect that the panchnama was not dictated by panchas and they were simply asked to sign panchnama. This court found that the conviction should not be sustained as demand and acceptance being vital ingredients were not established. In the present case, we find that the evidence of the informant and panch witness is supported by FIR and panchnama and is further supported by the evidence of police inspector Mr Bunneth. It clearly shows that the appellant had demanded and accepted an amount of Rs.500/-. This is not a matter of mere acceptance. This is not a matter of mere demand or mere recovery. In fact, even if we take it that demand, acceptance and recovery of currency notes are the three basic ingredients required to be proved through evidence, then also the evidence of the aforesaid witnesses supported by documentary evidence clearly proves the presence of the said three ingredients. In the present case, demand, acceptance and recovery of currency notes are all proved through the evidence as aforesaid.

28. So far as use of anthracene powder and ultra violet lamp is concerned, certain observations were made in the said judgment. However, in another matter a different view has been adopted by the Division Bench of this Court. Here we come across a decision of this Court in the case of Gopalbhai Oghadbhai Parekh v. State of Gujarat, reported in 2002(1) GLR 89. There it has been observed by the Division Bench of this Court that with regard to the contention of using anthracene powder for the trap and no explanation by the prosecution having been coming forth as to why the phenolphthalein powder

was not used, and therefore, the accused is entitled to be acquitted, the Court may only observe that there cannot be any hard and fast rule that the prosecution must use only phenolphthalein powder for the trap. It is also observed that when the Apex Court has held that it is desirable to use phenolphthalein powder, it cannot be contended that it is a mandatory requirement. This Court has, therefore, observed that decision of Gopalla Chhipa v. State (1999 (1) GLR 546) was not correctly decided. Moreover, it is well settled that there are hardly two to four elements, which are very rarely and hardly available, which would give light bluish fluorescent colour under ultra violet lamp. Therefore, it cannot be said that the experiment is not acceptable for any purpose. It, therefore, cannot be said that conviction based on the said experiment of anthracene powder and ultraviolet lamp cannot be sustained in appeal.

29. In the case of Meena, w/o Balwant Hemke v. State of Maharashtra, reported in 2000 SCC (Cri) 878, the facts were quite different. However, observations made in para 10 at page no.884 are important and relevant. It would therefore, be desirable to refer to the said observations as follows:

"Neither the quality of the material produced nor their proper evaluation could, in this case, be held sufficient to convince or satisfy the judicial conscience of any adjudicating authority to record a verdict of guilt, or such slender evidence. Indisputably, the currency note in question was not recovered from the person or from the table drawer, but when the trap party arrived it was found only on the pad on the table and was seized from that place only. The question is as to whether the appellant accepted it and placed it on the table or that the currency note fell on the paid on the table in the process of the appellant refusing to receive the same by pushing away the hands of PW 1 when the currency note was attempted to be thrust into her hands. PW 2, one of the panch witnesses, who accompanied PW 1, as a shadow witness, did not support the prosecution case. He had been treated hostile and his evidence eschewed from consideration by the courts below. The lady constable, another shadow witness, who first arrived on the spot after the signal was given by PW 1, was not examined at the trial. Law has always favoured the presence and importance of a shadow witness in the trap party, not only to

> facilitate such witness to see but also to overhear what happens and how it happens. In this case, the role of the lady constable was to enter first and hold the hands of the accused immediately after the acceptance of the bribe amount and she was stated to have done that, as planned. For reasons best known, such a vital and important witness had been withheld by the prosecution, from being examined J, who scribed the application for getting copies and who admittedly was all along with PW 1 and gave even the idea of lodging a complaint with the Anti-Corruption Bureau, had also been withheld from being examined. The other person, who was present at the place of occurrence though cited initially as a witness, was not examined by the prosecution but later was got examined as DW 1 and the evidence of this person completely belies the prosecution story. The corroboration essential in a case like this for what actually transpired at the time of the alleged occurrence and acceptance of bribe is very much wanting in this case. Even the other panch witness, PW 5 categorically admitted that even as the Inspector of Police, PW 6 arrived, the appellant gave the same version that PW 1 tried to force into her hands the currency note which she turned down by pushing it away, and his evidence also does not lend credibility to the case of the prosecution. The contradictory version of PW 1 of the very incident when earlier examined in departmental proceedings renders his testimony in this case untrustworthy. PW 3, the Head Copyist, seems to be the brain behind all this and PW 1 as well as J appear to be working as a group in this affair and despite the blunt denial by PW 3, his closeness to PW 1 and J stands well substantiated. All these relevant aspects of the case seem to have been completely overlooked by the courts below."

30. On going through the facts of the said case, it is found that the accused and the complainant had some sort of scuffle and it was found that in view of the aforesaid scuffle, some phenolphthalein powder might have touched the body of the accused and, therefore, the person of the accused showed purple colour when solution of sodium carbonate was sprinkled on the said said currency notes. This was a matter decided on the facts of the said case and therefore, it cannot be used for any other purpose so far as laying down a principle.

30.A. One important aspect should not escape our consideration. The proof of movement of currency notes from hand to hand and place to place through the proof of presence of anthracene powder, with the use of ultraviolet lamp, is not being used as substantive piece of evidence. It is used to lend support to the oral evidence of the witnesses, who initially get support from the evidence of panchnama and FIR. In other words, the oral evidence of witnesses get, support from the panchnama and the FIR and this oral and documentary evidence is being further supported by the presence of powder.

31. Again, it has been argued that the entries were posted very early and even copies were ready for being supplied to the informant. That when the process was over in the beginning of September, no prudent person would be prepared to pay bribe of Rs.500/- to the present appellant. That in the present case, entries were posted very early and in September, 1981 and, therefore, it is not probable that the appellant would demand bribe of Rs.500/- from the informant on 22.9.1981 and that the informant would be agreeable to pay the said amount on 22.9.1981 and would actually pay the same to the appellant on 23.9.1981.

32. It is true that the record shows that the entries were posted and certified in the beginning of September, 1981. There is no serious dispute about the same. However, there is absolutely no material on record to show that the said fact was conveyed to the informant by the appellant at any point of time before 22.9.81 or 23.9.81 that the entries were posted and certified by the Mamlatdar and when the copies were ready for being supplied to the informant. It is not on record that the informant came to know from other sources that the entries were posted and certified by the Mamlatdar and that copies were ready for being supplied to the informant. The prosecution has not come with a case that the aforesaid fact was conveyed to the informant before 22.9.1981 or 23.9.1981. Therefore, the fact that the entries were posted and certified in the first week of September, 1981 will not be a useful material in order to create any sort of doubt.

33. On the other hand, it is required tobe considered that when the entries were posted and certified in early September, 1981, then what was the explanation or reason with the appellant for not supplying relevant copies to the informant and for not informing the informant about

the same. This would mean that the appellant very well knew that the entries were posted and certified by the Mamlatdar and, therefore, copies could be very well supplied to the informant as and when the bribe amount is paid to him.It is also required to be considered that mere posting of entry would not be enough and it is required to be verified and certified by the Mamlatdar. Therefore, the appellant must have completed the process and thereupon, he appears to have demanded money so that as soon as money is received, the copies could be supplied to the informant without any loss of time.

34. It is then required to be considered that the relevant documents were seized through panchnama at the office of the appellant. It shows that those copies bear date 23.9.1981. Now, if the entries were posted and certified on 5.9.1981, then the appellant had no reason to prepare these documents on 23.9.1981. On the contrary, the fact showing that the certified copies were kept ready on 23.9.1981 clearly shows that there was a clear talk between the appellant and the informant about the payment of bribe amount of Rs.500/-. It was also clear to the appellant that the informant would approach him on 23.9.1981 with bribe money. Therefore, before the arrival of the informant to the office, the appellant kept those certified copies ready bearing the said date 23.9.1981. If there was no such understanding between the two and if the appellant was not aware that the informant would come to him on 23.9.1981, then there was no reason or necessity for the appellant to keep those documents ready on 23.9.1981 bearing date 23.9.1981. Therefore, it cannot be said that since the entries were posted and certified on 5.9.1981, it is not probable that the informant would still pay bribe amount of Rs.500/- to the appellant. On the contrary, the date 23.9.1981 posted on those certified copies clearly suggests that the informant did meet the appellant on 22.9.1981, that there was an understanding that the informant would bring bribe money on 23.9.1981 and therefore, the appellant was ready with the certified copies bearing date 23.9.81 when the informant met him on 23.9.81 with bribe money.

35. It has also been argued that the I.O. himself was a member of the raiding party and he also carried out the remaining investigation and, therefore, the investigation may not be honest and genuine. It is required to be considered that not only the P.I., even the PSI and other police personnel of ACB were all members of the raiding party. Panchnama was drawn and muddamal articles were seized. Thereafter there was hardly any formality required to be observed for the

purpose of completing investigation. It is a known fact that in an Anti-corruption trap, statements of panch witnesses are normally being recorded which normally does not happen in case of other police investigation. Therefore, if statements of those panch witnesses were not recorded, then nothing was required to be done by the I.O.

36. It has been argued there that the informant had met the appellant on 18.9.81 and at that time, the appellant had informed the informant that the entries were posted and certified and the I.O. could have investigated into this fact, had the I.O. been an independent Officer. Now, it is not disclosed that this fact had come out during the course of investigation. Therefore, there was no scope for any I.O. to investigate the same. Moreover, if the copies were really on hand on the said date, then it has not been explained as to why they were not supplied to the informant till 23.9.81 and as to why the date 23.9.81 was put on those copies.

37. It has also been contended by the learned Advocate for the appellant that the informant had earlier approached the appellant on 18.9.1981 and even there before and therefore, the informant can be presumed to know that the entries were posted and certified. However, it is not on record that either on 18.9.1981 or before the said date, the appellant had informed the informant that the entries were posted and certified. There is no evidence to show that on those dates, the informant came to know about the same from other sources. Again, the fact remains that if the copies were ready on 18.9.1981, then there was no reason for the appellant not to supply the same to the appellant on 18.9.1981 or therebefore. The fact that the informant was not supplied with copies of documents before 23.9.1981 clearly shows that the informant was never aware of the posting and certification of the entry and he was never allowed to know about the same.

38. It has also been argued on behalf of the appellant that the concerned Police Investigating Officer had prepared a draft of sanction and the competent authority had accorded sanction which is pari materia with the draft supplied to him. It has, therefore, been contended that there was total non-application of mind on the part of the competent authority while according sanction to the prosecution. In the present case, we find that it is very clear that under section 6 of the said Act of 1947, the court is prevented from taking

cognizance of offence punishable under the said Act of 1947 unless a valid sanction has been accorded by a competent authority to prosecute a particular public servant. In the present case, we find that in the past, sanction was accorded by a subordinate officer and therefore, those proceedings were required to be set at naught. However, fresh application was made and sanction was sought. Sanction was thereafter accorded by the competent authority. There is no dispute that the authority which sanctioned prosecution was not a competent one. The only contention is that the sanction accorded is pari materia, with the draft supplied to the said authority.

39. It happens that sometimes disputes are being raised about non-application of mind by the competent authority sanctioning prosecution. There may be some technical error here or there in drafting the said sanction. Therefore, if a draft has been supplied by a police officer or even by a subordinate officer, then the sanction accorded will not be treated to be illegal unless it is found that there was non-application of mind. Mere acceptance of a draft sanction by the competent authority for according sanction will not be a ground to hold that there was non-application of mind.

40. In the case of State of M.P. v. Shri Ram Singh, reported in AIR 2000 SC 870, an observation has been made that merely because authorization order was in typed proforma investigation and consequent proceedings could not be quashed. The argument in that case was that typed proforma was provided for authorization on a particular action in the matter which was used by the authority concerned. The Supreme Court has observed in it that simply because typed proforma was provided, it could not be said that the proceedings are vitiated. While taking the help of some observations from a case of R S Nayak v A R Antulay, (1984) 2 SCC 183 and in AIR 2000 SC 870, para 9), the Court has observed that whenever a question of construction arises upon ambiguity or where two views are possible of a provision, it would be the duty of the Court to adopt that construction which would advance the object underlying the ACt, namely, to make effective provision for the prevention of bribery and corruption and at any rate not defeat it. The Supreme Court has also observed in para 8 of the judgment that the menace of corruption was found to have enormously increased by first and second world war conditions. In para 10 it was observed that procedural delays and technicalities of law should not be permitted to defeat the object sought to be achieved by the Act. Any way, it is very clear that

simply because a draft was supplied and simply because sanction was accorded in terms of the draft supplied, the competent authority cannot be said to have failed in applying his mind to the facts and materials placed before him. In the present case, we find that the relevant papers were placed before the competent authority and the competent authority has, after fully considering the same, accorded sanction for the prosecution of the present appellant. In that view of the matter, the sanction accorded cannot be treated to be illegal on the aforesaid ground.

41. It is also required to be considered that as per the evidence of witness and panchnama, the paper under which the currency notes were kept on the table and the table cloth on which the currency notes were placed both were examined under the ultraviolet lamp and they both showed presence of anthracene powder thereon. It is not explained as to how the anthracene powder was present on the table cloth as well as on the paper under which the said currency notes were kept. This would be an important piece of evidence linking the currency notes with the appellant and the informant since no other person was found to have his person stained with anthracene powder.

42. It is also argued that only the hand of the appellant was examined under the ultraviolet lamp. When the currency notes were not placed in pocket and when they were found from the table, it was not at all necessary to examine other part of his body under the ultraviolet lamp. There may be some contradiction with respect to the colour of the bottle in which anthracene powder was kept in the office of the Anti-corruption Bureau. After all the incident took place at one point of time and the evidence was recorded after some lapse of time and, therefore, the prosecution witness may not be in a position to exactly reproduce whatever may have happened before 5 to 6 years. It is also not an important contradiction on material particulars.

43. It is true that such a case should be disposed of on expeditious basis but there are reasons and reasons for a delay in disposal of the case. Sometimes the courts are busy in conducting old cases and conducting cases of undertrial prisoners, sometimes they are busy with trial of other serious offences, sometimes they are busy with old matters pertaining to compensation under the Motor Vehicles Act, land acquisition cases wherein the people stand in que for getting compensation for the loss suffered by them. Sometimes they are busy with

hearing of bail applications wherein the accused may be in jail for a long time. There may also be delay due to paucity in number of judicial officers in the State. At the same time, it is also a fact that at times, the Advocates for the accused persons may also not be ready for conducting their cases. Sometimes, they may be busy elsewhere in conducting some other cases in other courts. Sometimes they go on strike for a very long time and do not attend the court , sometimes the witnesses may not be available on the given dates. Therefore, there are numerous reasons for delay in disposal of the cases. Therefore, on account of delay for one or the other reason, there will be some contradictions coming on record. In the present case, some contradictions here or there are not found touching the root of the case. Then such contradictions are required to be overlooked. In the present case, we find those contradictions are not found to be material contradictions and minor contradictions have to be accepted as genuine ones. In that view of the matter, simply because there are some minor contradictions in the evidence of witness and contradictions between oral evidence and documentary evidence on record, it would not be a ground for rejecting the evidence of the witnesses whose evidence is otherwise reliable. It is moreso, when the witnesses corroborate one another and when their evidence is further supported by documentary evidence like panchnama, FIR and the revenue records referred to hereinabove.

44. The said Act of 1947 also provides for a statutory presumption. For the purpose, section 4(1) of the said Act of 1947 may be reproduced for ready reference:

"4(1) Where in any trial of an offence punishable under section 161 or section 165 of the IPC (45 of 1860) punishable under sub-section (20 thereof it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

45. In the case on hand, the prosecution has satisfactorily proved, through cogent and convincing evidence which inspires confidence, that the appellant did demand illegal gratification from the informant, that the unwilling informant did pay the same to the appellant, that the appellant did accept the same from the informant and the said bribe money was received from the table of the appellant where he had placed the same after receiving the same from the informant.

46. Therefore, when the facts of demand-acceptance and recovery have been satisfactorily established, beyond any reasonable doubt, then the prosecution has become statutorily entitled to the benefit of the said presumption under section 4(2) of the said Act of 1947. In other case, the prosecution has to be held to have proved that the appellant received the money in question as an illegal gratification which was not his legal remuneration and which he was not entitled to receive. Even considering the amount in question (in 1987), it could not be treated to be a triffle money in order to attract the provision of sub-section (3) of section 4 of the said Act of 1947.

47. Then the appellant had opportunities to rebut the said statutory presumption during the cross examination of the prosecution witnesses as well as during the course of his statement recorded by the trial court under section 313 of the Code. However, it has to be recorded that nowhere the appellant rebutted the said statutory presumption nor did he even make an attempt to do so. Therefore, the oral evidence of the informant that the appellant demanded and accepted illegal gratification stands fortified and strengthened by this presumption also.

48. In a decision reported in 2000 SC (Cri.) 1206 in the case of Aditya Nath Pandey v. State, it has been observed that there was a passage of long time after the date of the commission of the offence under Prevention of Corruption Act, 1947, a lenient view was required to be taken and the period already undergone was found to be sufficient. At the same time, in the case of State of Gujarat v. Jivraj Manjibhai Patel, (1999 (2) GLR 1236), the respondent was acquitted in 1998 by the trial court in an offence of 1984 and the appeal was allowed in 1998 and there it was held that if there is a delay in disposal of cases by the High Court, then it would not be a ground in favour of the accused. In that case, this court had inflicted R.I. for three years. It was a matter relating to a bribe amount of Rupees One thousand.

It shows that the quantum of punishment is always a matter of discretion of the court. In the present case, we find that the appellant was convicted at relevant point of time and there was some delay in disposing of the appeal of the appellant. In that view of the matter, this is not a fit case for interfering with the quantum of punishment inflicted by the trial court.

49. Any way, it is found that there was sufficient evidence on records of the trial court to hold that the appellant did demand and accept bribe money from the informant. It is not a defence even before this court that the informant owed this money (Rs.500/-) to the appellant and that, when it was paid to the appellant or while paying it to the appellant the informant converted into bribe demand/acceptance. The trial court has given cogent and convincing reasons for accepting prosecution evidence. In my opinion also, this evidence inspires confidence and then, there is not a single reason which would enable the court to agree with the defence that the prosecution evidence be rejected. Once the prosecution evidence is found to be acceptable and reliable and once it is found that it inspires confidence, then there is no option for this court but to dismiss the appeal and to confirm the judgment and conviction order of the trial court.

50. As regards the quantum of punishment, it is true that there is some delay in disposal of this appeal. But that would not be sufficient to reduce the quantum of sentence. It is said that the cancer of corruption in public service/Govt. service is on increase and therefore, deterrent sentence is also required to be considered. Viewing from this angle, the punishment imposed of only three months' R.I. and fine of Rs.200/only, was on the side of leniency and hence no further lenient view is now required to be taken.

51. For the foregoing reasons, the appeal is meritless and deserves to be dismissed. This appeal is accordingly dismissed and the judgment and conviction order recorded in Special Case No. 2 of 1983 dated 20.7.1987 by the learned Special Judge at Surat are hereby confirmed. The appellant is on bail. He shall surrender forthwith to the custody. His bail bonds are cancelled.

The office shall immediately send intimation of this order to the trial court so that the said court may issue non-bailable warrant against the appellant and notice to the surety/sureties in order to enable the appellant to

surrender and to serve out the sentence.

24.3.2003 [D P Buch, J.]
msp